Now the act of bankruptcy in this case is founded on the appellant's failure to comply with a bankruptcy notice requiring him to satisfy the amount of the judgment debt which is the subject matter of this appeal. The judgment debt vanishes in the event of the appellant succeeding in his appeal and any assumption to the contrary is unwarranted. Therefore the applicant (the respondent in this appeal) has to show that the appellant was doing something more than he was justly entitled to do and that he was doing it needlessly to throw additional costs upon the shoulders of the respondent before he can ask for further security and a stay of the appeal.

I would dismiss this application with costs.

Application dismissed.

Solicitors: *Dato R. P. S. Rajasooria*; *Donaldson & Burkinshaw.*

Re TAN KHENG CHENG

[R. Cr. J. (Adams J.) July 7, 1962]

[J.B. — Criminal Revision No. 8 of 1962]

Road Traffic Ordinance, 1958 — Accused, a paid driver, charged under ss.98(1) and 74 — Employer similarly charged in different court and on different date and convicted — Observations on desirability of a joint trial — Evidence — When s.106, Evidence Ordinance, 1950, may be invoked.

In a charge under section 74 of the Road Traffic Ordinance, 1958, although the fact that the vehicle is insured is in the knowledge of the owner of the vehicle or his paid employee and therefore section 106 of the Evidence Ordinance applies, this situation arises only where the prosecution have first made out a case which, if unrebutted, would entitle the court to convict. If at the end of the prosecution case there is no evidence upon which a court could find that a case which if unrebutted would entitle it to convict, the court should not call upon the defence.

Per Curiam: It is highly desirable that in respect of offences under the Road Traffic Ordinance, 1958, that:

(1) where police are proceeding against both the owner and the driver of the vehicle, the two should be tried together. This would greatly assist the court and also ensure better dispensation of justice;

(2) where the charge is under section 74, for magistrates to ask to see both the certificate of insurance and the policy if they call on the defence;

(3) prosecutions are not left in the hands of very junior and apparently inexperienced police officers. Road traffic cases are important cases. Road discipline and the observance of the law contained in the Road Traffic Ordinance are necessary for the protection of the public from maiming or worse.

CRIMINAL REVISION.

Adams J.: The petitioner in this matter, one Tan Kheng Cheng, was charged before the learned Magistrate, Johore Bahru, with two offences relating to the use of his employer's motor car SB 1857, namely using it for the carriage of goods without a haulage permit contrary to section 98(1) of the Road Traffic Ordinance, 1958, and driving the vehicle without there being in force a valid certificate of insurance contrary to section 74 of the same Ordinance.

I sent for the record and found that it was manifestly irregular on the face of it. For that reason, and that reason only I decided that in the interests of justice I should act by way of revision although the petitioner had had in fact a right of appeal which he failed to exercise.

The facts are as follows. The petitioner is a paid driver and was at the time of the commission of the offence employed by Ang Kim Cheo of 57 Pheng Gek Avenue, Singapore. The vehicle was stopped in Jalan Scudai, Johore Bahru, while the petitioner was driving it and there was found in the vehicle a large quantity of hardware. He was duly charged.

Apparently his employer was also charged, but in another case and on another day and before another magistrate. He was very properly fined $100 on each charge and disqualified from obtaining a driving licence for 12 months. But I would again repeat what I have said many times before that in cases of this nature it is usually better to have the owner and the driver tried together. It would have been a great help to the learned magistrate in the case under review since the driver's excuse was that he was carrying these goods on the orders of his employer. The employer no doubt would have confirmed that. That might very well be considered as a reason 'special to the offence' which might have seemed sufficient to the learned magistrate not to disqualify the driver, the present petitioner, under the mandatory statutory provisions of section 74.

But from the record, the conviction on the second charge cannot stand. At no place in the evidence do the prosecution aver that the vehicle was not insured or that there was not in force a valid certificate of insurance as required by section 74. Although the fact that the vehicle is insured is in the knowledge of the defendant or his employer and therefore section 106 of the Evidence Ordinance applies and, once a *prima facie* case has been made out, it is for the defence to show that he was properly insured, the prosecution must make out a case which, if unrebutted would entitle the court to convict before it can call on the defence. The police must adduce evidence to say that they asked the defendant for his certificate of insurance and that he was unable to produce it or that having asked him for it and inspected it, they found that it did not cover the use for which the vehicle was being put at the time that it was stopped. This, I may say, is most important. I strongly advise magistrates to ask to see both the certificate of insurance and the Policy if they do call on the defence. They may very well find that the policy in fact covers the use of the vehicle.

There was not, therefore, at the end of the case for the prosecution any evidence at all upon which the magistrate could find that a case which if unrebutted would have entitled him to convict the defendant on the second charge, and he should not have called upon the defence.

The defendant elected to say nothing. He was thereupon convicted on both the charges and fined $100 on each charge and suffered the statutory disqualification for driving for 12 months.

I am quite certain that if the defendant had been tried together with the employer and that the learned magistrate had all the facts before him he would not have imposed so heavy a fine on the paid driver who was merely doing what he was told probably well knowing that if he refused he would lose his employment. At the same time, had the learned magistrate who tried the employer known the full circumstances I am equally certain that he would have fined him double the amount which he in fact imposed at least. In fact he imposed the same amounts that his learned colleague had imposed on the paid driver. I cannot understand why the police, who have been told time and time again, continue to charge employer (if they bother to charge him at all) and driver separately. Finally I cannot understand why traffic cases are left to be prosecuted by very junior and apparently inexperienced police officers. They are important cases. Road discipline and the observance of the law contained in the Road Traffic Ordinance are necessary for the protection of the public from maiming or worse.

Since there was not one iota of evidence produced to establish a *prima facie* case that the defendant was driving a motor vehicle without there being in force a valid certificate of insurance as required by section 74 of the Road Traffic Ordinance, the conviction on the second charge is quashed. The fine of $100 if paid must be repaid, and the order of disqualification set aside.

Secondly, as the magistrate had not all the facts before him, I feel that the fine on the 1st charge is manifestly excessive in view of the fact that he was a paid driver, and acting under orders from his employer. I confirm the conviction but I reduce the fine to $50, the balance of $50 if paid must also be repaid.

I hope that in the future both employer and employee will be jointly tried and that magistrates will realise that the employer bears the greater responsibility and should be fined to hurt his pocket so that he does not set off profit by using his vehicle illegally against the fine and is still able to show a profit.

Order: 1st Charge Conviction confirmed. Fine varied to $50, balance if paid to be refunded.

2nd Charge: Conviction quashed. Order of disqualification be and is hereby set aside. Fine of $100 if paid to be refunded.

Order accordingly.

MOHAMED YUSOF v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) July 12, 1962]

[J.B. — Criminal Appeal No. 12 of 1962]

Criminal Law and Procedure — Negligence by fire — Charge under first part of s.285, Penal Code — Degree of negligence necessary for conviction — Whether same as that in a civil action for damages — Amendment of charge under s.173(h), Criminal Procedure Code (Cap. 6).

For a conviction under the first limb of section 285 of the Penal Code, the negligence of the accused must amount to a degree which is criminal. There must be evidence of an act or omission which indicates a high degree of rashness or negligence. It must be more than a mere act or omission sufficient upon which to base a claim for damages in an action for negligence in a civil court.

CRIMINAL APPEAL.

John Pillai for the appellant.

Raja Azlan Shah (Deputy Public Prosecutor) for the respondent.

Adams J. (delivering oral judgment): The accused stands charged as follows:

"That you on 8.2.62 at about 3.00 p.m. at 53 m.s. Jalan Batu Pahat, Sri Lallang, in the District of Kluang, in the State of Johore, did an act with fire so negligently as to endanger human life and that you have thereby committed an offence punishable under section 285 of the Penal Code."

He was tried before the learned Magistrate sitting at Kluang. He was convicted and fined $100 in default thereof one month's imprisonment. The fine was paid.

The facts are very simple. The complainant, Kanda bin Tatil is a small holder owning about three acres of rubber at the 5th mile Sri Lallang. On the 8th February, 1962, when he was passing his estate he noticed a large fire on his estate and also on that of the accused's estate which abuts the complainant's, he also saw the accused there. He is alleged to have told the complainant and the witness, Arshad bin Hj. Asha'ari that he was burning the belukar and lallang on his estate. The witness, Arshad said that at the time he saw the accused the complainant's estate was not on fire. The wind was moderate, but the fire on the accused's estate was a large one which could cause danger to life and property.

What the learned Magistrate has overlooked is that the negligence must amount to a degree that is criminal. There must be evidence of an act or omission which indicates a high degree of rashness or negligence. It must be more than a mere act or omission sufficient upon which to base a claim for damage in an action for negligence in a civil court. There is no such evidence on the record nor is there in fact any evidence to show that the accused was criminally negligent in allowing the fire to escape from his land on to his neighbours. It may well be that the